

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Codie Walker,

Plaintiff

v.

Renee Baker & Jerry Howell,

Defendants

Case No. 2:19-cv-02221-CDS-DJA

**Order Denying Plaintiff's Motion for
Summary Judgment, Granting Defendants'
Motion for Summary Judgment, and
Closing Case**

[ECF Nos. 34, 36]

Plaintiff Codie Walker brings this 42 U.S.C. § 1983 action against defendants Renee Baker and Jerry Howell for their alleged deliberate indifference to his serious medical needs and violation of his right to due process. Baker was the warden of Lovelock Correctional Center (LCC) and Howell the warden of Southern Desert Correctional Center (SDCC) when Walker was transferred from LCC to SDCC in the summer of 2018. Walker argues that he had a medical need for a barrier-free institution,¹ a term used to describe facilities with wheelchair ramps and minimal stairs or hills, but the defendants nonetheless kept him at SDCC for almost three years—in violation of the Eighth Amendment—before transferring him back to LCC in April 2021. He also argues that while at SDCC, he was held in administrative segregation in violation of his Fourteenth Amendment right to due process. But because the undisputed facts demonstrate that neither defendant personally participated in those actions, I grant the defendants summary judgment and deny Walker summary judgment on each of his claims. I instruct the Clerk of Court to enter judgment accordingly and to close this case.

¹ He calls this a “flat yard” restriction, but the defendants point out that the term is an informal designation and interchangeable with the medical classification known as a “barrier free restriction.” ECF No. 36 at 11 n.3.

1 **I. Background**

2 Walker was first incarcerated in the Nevada Department of Corrections (NDOC) on
 3 December 12, 2012. ECF No. 36-1 at 7. He alternated amongst various NDOC institutions until
 4 he was classified with a medical restriction that required him to be housed at a barrier-free
 5 institution. *Id.* at 15. He was thus transferred to LCC in December 2017. *Id.* at 7. Baker was the
 6 warden of LCC at that time. *Id.* at 5. On June 22, 2018, a correctional officer discovered prison-
 7 made alcohol in Walker's cell. *Id.* at 100, 106. Walker admitted that it was his. *Id.* at 100. He also
 8 made derogatory remarks toward the officer and challenged him to a fight. *Id.* at 111. He "took a
 9 fighting stance towards [the officer,] squaring his shoulders in [the officer's] direction." *Id.* As
 10 soon as the officer called for backup, the situation deescalated. *Id.* Walker was moved to
 11 administrative segregation and charged with internal disciplinary measures for (1) assault and
 12 (2) possession and sale of intoxicants. *Id.* at 104, 110. The assault charge was dismissed, *id.* at 108,
 13 but Walker pled guilty to the intoxicants charge. *Id.* at 104. A few days later, on July 27, 2018,
 14 Walker's case worker reclassified Walker and noted that he was "no longer fit to be on LCC's
 15 yard due [to] threats against staff . . . and challenging [the] officer to a fight[.]" *Id.* at 25. She
 16 noted that LCC's medical staff removed the barrier-free restriction in Walker's file and
 17 recommended that he be transferred "to SDCC via NNCC [Northern Nevada Correctional
 18 Center] due to [the] threats against staff." *Id.* Walker was thus sent to NNCC the next day,
 19 where he was placed in administrative segregation for about two weeks. *Id.* He was placed in
 20 administrative segregation because of "CMS in GP," a shorthand indicating that he had issues
 21 with other inmates or staff at NNCC such that being placed in general population would pose a
 22 safety risk. *Id.*; ECF No. 36 at 4 n.2. Walker was transferred to SDCC on July 11, 2018. *Id.* at 8. He
 23 was placed in general population at SDCC. *Id.* at 25.

24 On September 20, 2018, his case worker noted that the medical staff again placed a
 25 barrier-free yard restriction in Walker's file. *Id.* at 25. They noted that LCC lost its barrier-free
 26 yard status and that only one other NDOC prison, Ely State Prison, would be an option for

Walker. *Id.* Walker informally grieved his concern about being at SDCC through NDOC's grievance system and was at first denied a transfer. *Id.* at 37. He escalated his grievance, and Howell responded to inform him that after further review of his file, he was approved for LCC "pending available bed space." *Id.* at 34. But various circumstances—Walker's own disciplinary issues, *id.* at 28, 64, the requirement that he swap with an LCC inmate because of the bed shortage, *id.* at 62, and eventually the onset of the COVID-19 pandemic, *id.* at 75—prevented Walker from being transferred. Walker was placed in administrative segregation for the majority of this time due to a disciplinary investigation against him. *Id.* at 28, 64. Even after the investigation had concluded, NDOC staff determined that he could not return to general population for his own safety. *Id.* at 119. Walker grieved that determination and Howell again responded to his grievance, stating that circumstances "of which [Walker was] aware" prohibit[ed him] from safely cohabitating in general population." *Id.* at 116. Howell added that Walker's safety would not be compromised "simply because [he was] willing to sign a waiver to reenter the general population," and that Walker was approved for transfer back to LLC "as soon as possible after inmate transportation between NDOC institutions resumes" post-COVID. *Id.* Walker was finally moved back to LCC on April 7, 2021. *Id.* at 8.

Walker now brings two claims against the two defendants: (1) an Eighth Amendment deliberate-indifference-to-medical-needs claim, and (2) a Fourteenth Amendment due process claim. Am. Compl., ECF No. 9 at 4–8. He and the defendants each move for summary judgment on both claims.

II. Legal standard

Summary judgment is appropriate when the pleadings and admissible evidence "show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (citing Fed. R. Civ. P. 56(c)). At the summary-judgment stage, the court views all facts and draws all inferences in the light most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100,

1103 (9th Cir. 1986). If reasonable minds could differ on material facts, summary judgment is inappropriate because its purpose is to avoid unnecessary trials when the facts are undisputed; the case must then proceed to the trier of fact. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995). Once the moving party satisfies Rule 56 by demonstrating the absence of any genuine issue of material fact, the burden shifts to the party resisting summary judgment to “set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Celotex*, 477 U.S. at 323. “To defeat summary judgment, the nonmoving party must produce evidence of a genuine dispute of material fact that could satisfy its burden at trial.” *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 989, 992 (9th Cir. 2018).

10 III. Discussion

11 a. *Baker is entitled to summary judgment on both of Walker’s claims against her.*

12 Walker sues Baker under 42 U.S.C. § 1983, but the undisputed facts demonstrate that
 13 she was not personally involved in either his placement at a barrier-free institution (the basis for
 14 his deliberate-indifference claim), or his placement in administrative segregation (the basis for
 15 his due process claim). And a defendant may be liable under § 1983 only if they personally
 16 participated in the actions creating a constitutional violation. *Taylor v. List*, 880 F.2d 1040, 1045
 17 (9th Cir. 1989); *see also OSU Student All. v. Ray*, 699 F.3d 1053, 1069 (9th Cir. 2012) (“[E]ach
 18 government official . . . is only liable for [their] own misconduct.”). Simply put, a person cannot
 19 be held liable for a constitutional violation under § 1983 unless they were integral participants in
 20 the unlawful conduct. *Keates v. Koile*, 883 F.3d 1228, 1241 (9th Cir. 2018). A person “subjects”
 21 another to the deprivation of a constitutional right if they do “an affirmative act, participate[] in
 22 another’s affirmative acts, or omits to perform an act which [they are] legally required to do that
 23 causes the deprivation of which complaint is made.” *Lacey v. Maricopa County*, 693 F.3d 896, 915
 24 (9th Cir. 2012) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743–44 (9th Cir. 1978)).

25 First, Walker fails to demonstrate that Baker was involved in his transfer from LCC to
 26 SDCC. His only purported evidence of her personal participation is the allegation he makes in

1 his own complaint. ECF No. 42 at 16 (citing ECF No. 9). But in resisting a motion for summary
2 judgment, a nonmoving party must “go beyond the pleadings and[,] by her own affidavits, or by
3 the depositions, answers to interrogatories, and admissions on file, designate specific facts
4 showing that there is a genuine issue for trial.” *Celotex Corp.*, 477 U.S. at 324 (internal quotation
5 marks omitted). Because there is no evidence demonstrating that Baker was personally involved
6 in Walker’s transfer, I deny Walker summary judgment and grant Baker summary judgment on
7 the deliberate-indifference claim against her.

8 Second, Walker fails to demonstrate that Baker was involved in his placement in
9 administrative segregation. Walker’s motion for summary judgment and his opposition to the
10 defendants’ summary-judgment motion both indicate that he no longer intends to pursue his
11 due-process claim against Baker. ECF Nos. 34 at 19 (“Plaintiff makes [the due-process] claim
12 only against defendant Jerry Howell, warden at SDCC, for the time he was placed in
13 administrative segregation . . . not Renee Baker.”), 42 at 22 (same). While a party’s non-
14 opposition to a motion for summary judgment is not itself sufficient to grant summary
15 judgment, *see* Fed. R. Civ. P. 56(a), my independent review of the evidence presented by both
16 parties identifies no basis to hold Baker liable for Walker’s placement in administrative
17 segregation. Walker was in administrative segregation at LCC between June 22–27, 2018, but
18 the defendants have demonstrated that such a placement occurred as a result of Walker
19 possessing and/or selling alcohol from his prison cell and subsequently threatening to fight a
20 correctional officer, that Walker went through the typical NDOC disciplinary process, and that
21 Baker was not the person who approved the discipline. ECF No. 36-1 at 25, 98–111. Because there
22 is no genuine dispute that Baker was uninvolved in Walker’s placement in administrative
23 segregation, I deny Walker summary judgment and grant Baker summary judgment on his
24 Fourteenth Amendment claim against her.

1 *b. Howell is entitled to summary judgment on both of Walker's claims against him.*

2 Walker brings a deliberate-indifference-to-medical-needs claim against Howell for his
 3 alleged role in keeping Walker at SDCC despite Walker's barrier-free restriction. To establish
 4 an Eighth Amendment violation for deliberate indifference, a plaintiff "must satisfy both an
 5 objective standard—that the deprivation was serious enough to constitute cruel and unusual
 6 punishment—and a subjective standard—deliberate indifference." *Snow v. McDaniel*, 681 F.3d 978,
 7 985 (9th Cir. 2012). To establish the first prong, "the plaintiff must show a serious medical need
 8 by demonstrating that failure to treat a prisoner's condition could result in further significant
 9 injury or the unnecessary and wanton infliction of pain." *Jett v. Penner*, 439 F.3d 1091, 1096 (9th
 10 Cir. 2006) (cleaned up). To satisfy the second prong, a plaintiff must show "a purposeful act or
 11 failure to respond to a prisoner's pain or possible medical need and [] harm caused by the
 12 indifference." *Id.* "Indifference may appear when prison officials deny, delay[,] or intentionally
 13 interfere with medical treatment[.]" *Id.*

14 Walker fails to establish any triable issues with respect to the subjective standard and
 15 thus cannot meet his burden at summary judgment. He identifies Howell's delay in transferring
 16 him back to LCC (or any other barrier-free institution) as the alleged failure to respond to his
 17 medical need, but he cannot demonstrate that Howell was responsible for transferring inmates
 18 or, even if he were, that he was harmed by the delay before his eventual transfer. There is no
 19 indication in the evidence before me that Walker suffered harm as a result of his delayed transfer
 20 to LCC. While Walker alleges in his complaint that his ailments required him to have a barrier-
 21 free restriction, ECF No. 9 at 4–5, he never alleges what harm resulted from his stay at SDCC.
 22 And he does not present any evidence creating a genuine dispute about whether he was, in fact,
 23 harmed. So because Walker cannot demonstrate that he was harmed, he cannot satisfy the
 24 subjective standard for an Eighth Amendment violation. I thus deny him summary judgment and
 25 grant Howell summary judgment on the deliberate indifference claim against Howell.

Walker also brings a due process claim against Howell for his alleged role in keeping Walker in administrative segregation while at SDCC. The Fourteenth Amendment’s Due Process Clause prohibits states from “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. Inmates have the right to due process while incarcerated, but such a right “may be diminished by the needs and exigencies of the institutional environment.” *Wolff v. McDonnell*, 418 U.S. 539, 555 (1974). And the Due Process Clause does not create a liberty interest in a prisoner to be free from the “normal limits or range of custody [that his] conviction has authorized the [s]tate to impose.” *Sandin v. Conner*, 515 U.S. 472, 478 (1995). Generally, “the hardship associated with administrative segregation, such as loss of recreational and rehabilitative programs or confinement to one’s cell for a lengthy period of time, does not violate [due process] because there is no liberty interest in remaining in the general population.” *Anderson v. County of Kern*, 45 F.3d 1310, 1315 (9th Cir. 1995). However, if a prisoner establishes that his segregation is an atypical and significant hardship, he is entitled to notice of the reason for segregation, an informal review of the evidence against him, and periodic review of his placement. *Augborne v. Filson*, 2022 WL 3159322, at *3 (D. Nev. Aug. 8, 2022) (citing *Hewitt v. Helms*, 459 U.S. 460, 476–77 & n.9 (1983), *disapproved of in part on other grounds by Sandin*, 515 U.S. at 482–83). But typically, “administrative segregation in and of itself does not implicate a protected liberty interest[.]” *Serrano v. Francis*, 345 F.3d 1071, 1078 (9th Cir. 2003).

In determining whether Walker’s due-process rights were violated by his placement in administrative segregation, I must consider the extent of difference between segregation and general population, the duration and intensity of his confinement, and whether the sanction extended the length of his prison sentence. *Serrano*, 345 F.3d at 1078. Walker argues that the difference between his segregation and general population was great, as segregated inmates could not attend educational or religious services as often, could not use the phone on certain days, could not shower on certain days, received less yard time, were permitted to spend less money at the commissary, were not permitted to visit the cafeteria for meals, and had less

1 freedom of movement within the prison. ECF No. 42 at 10–11. He was in administrative
2 segregation for a long time—596 days, by his count. *Id.* at 12. However, he does not allege that
3 the sanction extended the length of his prison sentence. And he was given an initial due-process
4 hearing on August 22, 2019—two days after he was initially placed in administrative
5 segregation—as well as 16 additional periodic reviews between August 2019 and March 2021.
6 ECF No. 36-1 at 30–32.

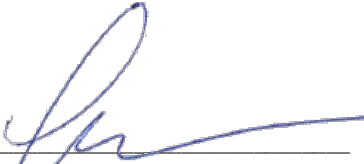
7 While Walker has demonstrated genuine disputes as to whether his administrative
8 segregation comported with due process, he does not demonstrate that Howell was personally
9 involved in any of the decisions to segregate him or keep him segregated. The extent of Howell’s
10 involvement in those decisions comes from Howell’s response to one of Walker’s grievances,
11 wherein Howell states that SDCC investigators determined that “current circumstances . . .
12 prohibit you from safely cohabitating in general population at this institution . . . [y]ou have
13 been submitted and approved for transfer to [LCC] and will be transferred as soon as possible
14 after inmate transportation between NDOC institutions resumes.” ECF No. 36-1 at 116. But as
15 other judges in this district have found, “[a]ctions in reviewing a prisoner’s administrative
16 appeal cannot serve as the basis for liability under a § 1983 action.” *Jordan v. Veal*, 2009 WL
17 607414, at *4 (E.D. Cal. Mar. 9, 2009) (citing *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993));
18 *Gates v. LeGrand*, 2020 WL 3867200, at *5 (D. Nev. Mar. 27, 2020) *report & recommendation adopted*,
19 2020 WL 1890540 (D. Nev. Apr. 16, 2020) (“Where the defendant’s only involvement in the
20 allegedly unconstitutional conduct is the ‘denial of administrative grievances or the failure to
21 act, the defendant cannot be liable under [§] 1983.’”). While these decisions are not binding, I
22 find their reasoning persuasive and adopt it here. As a result, I deny Walker summary judgment
23 and grant Howell summary judgment on Walker’s due-process claim.

1 IV. Conclusion

2 For the foregoing reasons, IT IS HEREBY ORDERED that Walker's motion for summary
3 judgment [ECF No. 34] is DENIED.

4 IT IS FURTHER ORDERED that the defendants' motion for summary judgment [ECF
5 No. 36] is GRANTED. The Clerk of Court is directed to enter judgment accordingly and
6 CLOSE THIS CASE.

7 DATED: July 24, 2023

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11 Cristina D. Silva
12 United States District Judge
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